

TESTIMONY OF MORRIS PETERSON

Chairman Meadows, members of the Committee, my name is Morris Peterson and I want to thank you for the opportunity to testify before you this morning. I am testifying today on behalf of the National Basketball Players Association, which represents 430 professional basketball players and I am joined by Dan Wasserman, Director of Communications for the NBPA.

I am currently a professional basketball player with the Oklahoma City Thunder and have played in the NBA for 10 seasons. I was born and raised in Flint, Michigan, and I still reside there today. I played collegiately at Michigan State University where I helped the Spartans win the 2000 NCAA title, was voted Big Ten Player of the Year and First Team All Big Ten, and had my number retired.

The Players Associations are here today to voice our concerns about the negative impact House Bill 5964 will have if passed. Under current Michigan law, all public figures — including prominent government officials, successful businessmen, professional athletes, and entertainers — maintain the right to control the commercial use of their name and image. Passing House Bill 5964 will permit video game and souvenir

manufacturers, many which are located outside of Michigan, to hijack public figures' images without their consent.

I would like to address two main points today in my testimony. First, I would like to explain why the right of publicity is important for all public figures, and in particular professional athletes. Second, I would like to discuss the negative implications of Michigan's failure to protect the right of publicity.

To begin, I am concerned that House Bill 5964 infringes on two important rights: first, the right of individuals to control their likeness, and second, the right of individuals' to generate revenue from the use of their likeness.

First and foremost, the right of publicity is important because it permits individuals to choose how, if at all, their likenesses can be used. Michigan currently protects individuals' right to decide whether they will associate with certain products and companies. This bill, however, would strip individuals of the ability to control their image. House Bill 5964 would grant video game manufacturers, souvenir companies and others the right to control individuals' likenesses, with little regard for the potential reputational harm that could result.

Serious reputational harm would result if a notable Detroit Piston strongly opposed illegal drugs, yet had his name used in a song that encouraged drug use. Severe reputational harm would also result if a famous Detroit Tiger opposed hand gun use yet was cast as the lead character in a first-person shooter video game. Nonetheless, this bill permits these situations and prevents athletes from choosing which companies and causes may use their names and images for commercial purposes.

Second, I am concerned that House Bill 5964 unjustly enriches businesses that exploit celebrities for commercial purposes. Professional athletes spend considerable effort creating a public image that allows them to monetize their likenesses. In fact, the money that top professional athletes make from endorsements and licensing often exceeds their individual player salaries. This bill, however, misappropriates the athletes' hard work in building their brand. It hardly seems fair and equitable to permit outside interests, such as video game companies, to profit off value that the company does not create.

Consider a famous case that happened prior to states recognizing a right of publicity. In 1941, All-American college quarterback Davey O'Brien

sued Pabst Blue Ribbon, a beer company, for placing his photo on its annual football calendar. O'Brien was a member of the Allied Youth of America, which advocated that young people avoid alcohol consumption.

Nonetheless, Pabst placed O'Brien's image next to a glass of beer on their annual calendar without his permission. O'Brien sued Pabst because he felt "embarrassed and humiliated," but the court dismissed his lawsuit. This out-dated ruling resulted in numerous famous athletes, including Detroit boxer Joe Louis, being unable to protect themselves against the commercial exploitation of their images. Fortunately, there are legal protections that have been instituted to prevent such unjust results. However, our concern is that situations similar to O'Brien's could occur again if House Bill 5964 is passed.

The common argument against the right of publicity is that "athletes make enough money, so why does it matter if businesses profit off their images?" The answer is simple: no other workers have shorter shelf lives than professional athletes. Although I have been lucky to remain healthy for the last decade, the NBA player's career lasts for an average of 5 years. The number is the same in hockey and baseball. In football, a player's career lasts an average of 3 years. Contrast that with the career of a

government official, which can span 20, 30, or even 40 years. Professional athletes sacrifice their bodies and risk long-term damage to their health, to allow companies to profit off their efforts would be inequitable.

As I mentioned before, all public figures, not just professional athletes, have a stake in maintaining the current protections provided by Michigan law. This includes members of state and federal governments. Consider the following possibility: to capitalize on the public's interest in political corruption, an enterprising video game company creates a video game that permits users to assume the role of members of the Michigan state legislature. Officials could be identified by their home states, real names, and real physical characteristics including height, weight, hair color, and skin color. The game would be similar to *Grand Theft Auto* where the user's goal would be to rise through the political ranks by committing illegal acts. Users could earn points by committing fraud, embezzling money, wire tapping political opponent's phones, or bribing other government officials. The game would also allow politicians to accept payments from corporations to take all-expense paid trips to exotic locations.

Would this hypothetical video game be legal? In states such as Kentucky that recognize the right of publicity via statute, the answer would

be no. In states such as Georgia that recognize a common law right of publicity, the answer would also be no. But if House Bill 5964 passed, the answer in Michigan would be yes.

We respectfully ask that you not pass this bill in its current form because it would be improper to permit video game manufacturers, souvenir companies, and others to misappropriate professional athletes' likenesses. Moreover, it is important to remember that all individuals — not just professional athletes — have an interest in controlling the use and monetization of their names and images. This bill is written in a manner that eliminates rights that all individuals currently enjoy under Michigan law, and for that reason, we do not support this legislation.

Chairman Meadows, members of the Committee, thank you for the opportunity to testify today on behalf of myself and the other members of the National Basketball Players Association. I would be happy to answer any follow-up questions that you may have.